

**SUMNER COUNTY BOARD OF ZONING APPEALS
MINUTES
APRIL 13, 2023
REGULAR MEETING 5:00 p.m.**

SUMNER COUNTY ADMINISTRATION BUILDING
BETHEL BROWN COMMISSION CHAMBERS
355 N. BELVEDERE DRIVE
GALLATIN, TN. 37066

MEMBERS:

BRUCE RAINEY, CHAIRMAN
SANDY WEBSTER, VICE-CHAIRMAN
MAC HOLT
JIM HARRISON

JOSH SUDDATH, DIRECTOR OF DEVELOPMENT SERVICES
PATRICIA CRANDALL, ADMINISTRATIVE ASSISTANT TO THE DIRECTOR OF
DEVELOPMENT SERVICES (Minute Taker)
KATHY YOUNG, STAFF PLANNER

Mr. Rainey called the meeting to order and stated that all members were present.

Mr. Rainey called for approval of the previous minutes.

**Ms. Webster made a motion to approve the March 2023 Minutes.
Mr. Holt seconded the motion. The motion passed unanimously.**

Mr. Rainey asked if there are any changes to the Agenda.

Mr. Suddath stated that there are no changes.

Mr. Rainey stated that the Agenda stands as presented.

At this time, Mr. Rainey introduced the Consent Agenda.

CONSENT AGENDA:

1. **Wade Lyles** is requesting a continuation of a Conditional Use Permit granted on February 1, 1994 to conduct an auto shop with tire sales. Subject property is located at **2048 Scotty Parker Road, Gallatin, TN 37066**, is on Tax Map 092, Parcel 006.04, contains 8.51 acres, is zoned Rural Residential (RR), and is in the 7th Commission Voting District (Danny Sullivan).
The adjoining property owners were notified by regular mail.

There being no one wishing to remove or discuss the consent agenda item, Mr. Rainey called for a motion. Ms. Webster made a motion to approve, seconded by Mr. Harrison. The Consent Agenda was approved unanimously.

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- 1. To approve a request for a two year continuation of a Conditional Use Permit authorizing operation of an auto shop with tire sales at 2048 Scotty Parker Road, Gallatin.**

REGULAR AGENDA:

- 1. Cumberland Electric, represented by Chad Watkins is requesting a Special Exception to replace a 185' Guyed Wireless Communication Tower with a 190' Self-supporting Wireless Communication Tower. This request is made pursuant to Chapter 11, Section 1105 of the County Zoning Resolution. Subject property is located at 402B Moore Link Road, Portland, TN, 37148, is on Tax Map 073, Parcel 026.00, contains 1.61 acres, is zoned Rural Residential (RR) and is in the 4th Commission Voting District (Dillon Lamberth)
Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, March 30, 2023.**

Mr. Suddath provided an overview of the property, stating that the approval would allow the property owner to replace an existing 185' Guyed Wireless Communication Tower with a 190' Self-supporting Wireless Communication Tower. Administrative approval is granted for towers of the same or less height however when increasing the height of a tower, zoning regulations require that they must go through the Board of Zoning Appeals for approval. Mr. Suddath noted that current law requires all towers must be reviewed, an exception from the BZA would be for a tower erected during the time of emergency.

Next, Mr. Suddath displayed an aerial view of the property and explained the location of the tower that is being replaced. Mr. Suddath noted that a second tower to the south of the lot is owned by TVA.

Mr. Suddath stated that the Special Exception request seeks to replace the existing 185' guyed communications tower with a 190' self-supporting communications tower for the purpose of two way communication with their fleet.

Explaining the Site Plan, Mr. Suddath stated that the site plan appears deficient in details as it only indicates the point of the new tower. A full on site plan indicating the compound, fencing and landscaping was not provided. Mr. Suddath stated that another issue with the site plan submitted was that a fall radius was not indicated on the site plan.

Mr. Suddath went on to explain the fall radius of the 190'ft tower and noted that there are no structures that are contained within the fall radius. Should the tower fall, it would not land on a structure but would fall over the road. Zoning regulations do require the fall radius must be contained on the subject property, unless it is a break-away tower. Mr. Suddath stated that it is unclear if this tower would meet the fall radius requirement.

Referencing the Development Review and Permitted Uses for the Rural Residential Zone per the County Zoning Resolution, Mr. Suddath stated that in the Rural Residential zone, towers

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over 100 ft. or more require a Special Exception by the BZA.

Mr. Suddath provided the following information regarding this request:

- A set of construction plans have been submitted by the applicant.
- Actual footprint of tower and appurtenances not shown on submitted site plan.
- Fall radius is not provided on submitted plans. No residential or other structures located within fall radius. Entire fall radius is not contained within the subject property as is required by County Zoning Resolution.
- FAA No Hazard Finding not provided.
- No Fence or Landscaping indicated on the plans that have been submitted
- Not clear whether this tower will be a “breakaway” configuration, which would make a smaller fall radius allowable.

Mr. Suddath stated that the County Zoning Resolutions gives the BZA authority to approve towers through Special Exceptions and explained the County Zoning Resolution, Chapter 11, Section 1105, Subsection H, area of Noncompliance. Among the requirements listed the antenna-supporting structure must meet setbacks, a fence must not be less than eight (8) feet in height must be shown, a landscaping and vegetative buffer shall be installed and the FAA must approve the height of the tower.

Mr. Suddath added that local jurisdiction is superseded by Federal Legislation (Federal Telecommunications Act of 1996), which says that local governments may not amend the zoning codes to specific zones or prohibit the construction of personal wireless service facilities (cell towers). Cell towers shall be allowed by the BZA and the BZA can establish criteria for these. Federal Act also explicitly states that local governments may not regulate these facilities on “the basis of the environmental or health impacts of radio frequency emissions.” In other words, Congress has determined that there are no such impacts, and local zoning boards may not take them into consideration; if they are, decision is subject to being overturned by the Courts.

Next, Mr. Suddath displayed 47 U.S.C. §332(c)(7)(B)(iv) of the Federal Telecommunications Act of 1996 which states that *“No State or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”*

Mr. Suddath added that case law indicates that any argument that a tower would diminish area property values must be supported on the record by the written findings of a licensed Property Appraiser or other similar professional. Any denial must be “supported by substantial evidence contained in a written record” 47 U.S.C. § 332(c)(7)(B)(iii)).

Mr. Suddath displayed photos of the property, public notice sign on the property and the tower.

Addressing the four Key Requirements/Required Findings for Special Exceptions, Mr. Suddath stated that the Special Exception shall only be granted provided the Board makes specific findings that it:

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- Is so designed, located, and proposed to be operated so that the public health, safety and welfare will be protected;

Staff Interpretation: Item is not designed to comply with requirements related to fall radius. FAA No Hazard Determination not provided. Tower will replace existing tower at this location. As noted, Federal law requires that any concerns related to environmental effects of radio frequency emissions must not be taken into account as part of the Board's deliberations or decision.

A special exception shall only be granted provided the Board makes specific findings that it:

- Will not adversely affect other property in the area in which it is located;

Staff Interpretation: No adverse impacts to the area anticipated, and no studies to this effect have been provided to County staff at this time. As noted, Federal law requires that any concerns related to environmental effects of radio frequency emissions must not be taken into account by the BZA.

A special exception shall only be granted provided the Board makes specific findings that it:

- Conforms to all applicable provisions of this Resolution for the district in which it is to be located and is necessary for public convenience in that location and if applicable, meets the specific standards below.

Staff Interpretation: Item is not designed to comply with requirements related to fall radius. FAA No Hazard Determination not provided.

A special exception shall only be granted provided the Board makes specific findings that it:

- Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

Staff Interpretation: Proposed construction will result in the construction of a wireless communications tower that will replace an existing tower that has been in place for some years. Item is not designed to comply with requirements related to fall radius. FAA No Hazard Determination not provided.

Mr. Suddath explained the next steps that would need to be taken after receiving BZA approval. The project may move forward and may obtain an Administrative Site Plan approval from Staff. After obtaining approved Administrative Site Plan, a Zoning and Compliance Certificate will be issued, and a Building and Land Disturbance Permit may be obtained. After obtaining a Building and Disturbance Permit, construction may begin.

Mr. Suddath concluded his presentation with example motions, before turning the meeting over to Mr. Rainey.

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Mr. Rainey opened the Public Hearing.

Chad Watkins, Communications Engineer for Cumberland Electric, stated that the request is to replace an existing tower from 1982 with a tower they currently have at another location. The primary use is for vital two-way communication between the Gallatin and Portland crews. Mr. Watkins stated that the tower is considered a break-away tower and can obtain documentation for this, adding that the tower breaks away at a half way point. Application with the FAA was submitted in February and is taken longer than the 45 days expected and will be submitted as soon as it is received.

Mr. Rainey asked if there were any issues with the required fencing around the tower.

Mr. Watkins replied that there were no issues and that they would be willing to place fencing around the tower and work on landscaping.

There being no one else wishing to speak, Mr. Rainey closed the Public Hearing.

Mr. Suddath stated that the BZA can request as conditions of approval an FAA letter, break-away tower information for review by the County Engineer, a landscaping and fencing plan at the site plan stage.

Mr. Harrison stated he would be making a motion to approve with added conditions of approval presented by Mr. Suddath.

Mr. Holt made a motion, to approve request for a Special Exception for Verizon Cumberland Electric to replace a 185' Guyed Wireless Communications Tower with a 190' Self-supporting Wireless Communication Tower at 402B Moore Link Road, Portland (Map 073 Parcel 026.00) in accordance with submitted plans with the following conditions:

- a) Applicant shall obtain Site Plan Approval in accordance with Chapter 14 of the County Zoning Resolution.**
- b) Applicant shall obtain a Zoning Compliance Certificate, Building Permit and Land Disturbance Permit from the County Building and Codes and Development Services Departments**
- c) Applicant shall provide FAA Letter**
- d) Applicant shall provide break-away tower confirmation**
- e) Applicant shall include fencing on the Site Plan**

Ms. Webster seconded the motion.

Discussion ensued as to the clarification of the conditions of approval. Mr. Suddath stated that a letter outlining the conditions of approval would be sent to applicant. Once the site plan with conditions of approval have been reviewed and are compliant, the break-away components would be reviewed by the county engineer. If the break-away fall radius is not compliant and still shows as

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the tower falling into an adjacent property, there will be a plan revision and possibly a return to the BZA.

The motion passed unanimously.

- 2. Victoriano Torres Martinez** is requesting a Special Exception to construct and operate a Construction Sales and Service business. This request is made pursuant to Chapter 14, Section 141 of the County Zoning Resolution. Subject property is located at **957 Harsh Lane, Castalian Springs, TN, 37031** is on Tax Map 132, Parcel 014.01, contains 4.24 acres, is zoned Rural Residential (RR) and is in the 6th Commission Voting District (David Klein). **Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, March 30, 2023.**

Mr. Suddath noted that the property is a non-conforming lot of record created prior to the adoption of the Zoning Regulations. Property owner is requesting a Special Exception to operate a concrete construction business known as “Torres Concrete Construction” from the subject property. Per applicant, proposed use is for tools and storage equipment only. Other uses related to making or storing of concrete require an Industrial zoning designation. Keeping equipment and tools falls into the Construction Sales and Services category. Mr. Suddath stated the scope of the operation is not known at this time, as no business summary was been provided.

Next, Mr. Suddath displayed the aerial view of the property stating that adjoining property owners had been notified by Certified Mail and Public Notice advertised in the Gallatin News and Hendersonville Standard. Mr. Suddath noted that there has been some site work done nearby, however access to the back of the property was not available due to a locked gate. There is also a house that was permitted on the property in 2022.

Mr. Suddath explained that the zoning compliance application submitted in December 2022, stated the request as being for a barn with one restroom and for storage of tools and construction equipment. Application was reviewed based on information provided and the structure was classified under “Construction Sales and Services,” and a Special Exception from the BZA would be required. Initially they were wanting to operate the business out of an existing structure on the property that did not meet setback requirements and would need to be moved back in order to operate the use. A Special Exception request was then submitted months later stating request for a storage structure to store tools and equipment with one restroom for Torres Concrete Construction with no concrete storage on property. A surveyed plot plan was submitted as part of the Special Exception request application.

Mr. Suddath explained the Plot Plan provided which contains an existing before mentioned structure and a second small structure that would probably not require a permit, a graded graveled area, a pad and the proposed area of the barn. In explaining the two septic areas located on the plot plan, Mr. Suddath stated that per applicants translator during pre-application meeting, there are plans to build a home towards the back area of the property.

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Referencing the plot plan, Mr. Suddath explained the proposed barn location and a second graveled area in the rear of the property. Mr. Suddath stated he was unaware of the connection between the building in the back and the front graveled area in the front part of the property as there were no plans provided.

Next, Mr. Suddath displayed the Use Classification per the County Zoning Resolution and explained that the use would fall into the classification for Construction Sales and Services. Referencing the Zoning Classification from Appendix B, Land Use Activity table, Mr. Suddath explained that this type of business located in a rural residential area would require a Special Exception or a Conditional Use Permit.

Mr. Suddath explained the Special Conditions for Construction Sales and Services under the Zoning Resolution Requirements for Construction Sales and Services (Chapter 14, Section 1411, Subsection G.) and stated that the stand alone request is for this use only. Mr. Suddath stated that the lot meets the minimum 2 acre requirement, and a Site Plan shall be required if Special Exception were to be approved. All buildings, structures, storage areas, employees and equipment parking areas and areas utilized for this use must be no less than 50 ft. from all property lines, the gravel area on site plan as well as the existing building is well within the property line and site would need to be re-designed in order to meet requirements. Mr. Suddath stated that moving things to the rear and center of the site would satisfy zoning requirements. Mr. Suddath explained that all buildings, structures, storage areas, employee and equipment parking areas, and other areas utilized for the use that are 200 feet or less from property line shall be screened from view. The lot does not appear to meet the Type 2 Landscape Buffer requirement as there may not be enough tree covering to satisfy this requirement, and plantings may be required to screen property from view. Placing parking in the front part of the property would not meet requirement.

Mr. Suddath next displayed photos taken of the outside of the property during his visit and explained that due to a locked gate was unable to get a better access view of the back of the property. Mr. Suddath added that at this time it is unclear what the full use of the property is.

Mr. Suddath then addressed the four Key Required Findings for this request, explaining that a Special Exception shall only be granted provided the Board makes specific findings that it:

- Is so designed, located, and proposed to be operated so that the public health, safety and welfare will be protected;

Staff Interpretation: The use is located along a County road classified as a Minor Rural Collector per the County's Major Thoroughfare Plan. The use is not expected to generate significant traffic. No buffer is proposed to be constructed per the submitted plot plan, which is required for this use, and components of the proposed activity appear to be located less than 50 feet from the property line, which is not allowed. No business summary has been provided, and so the scope of the proposed use is not fully known at this time.

Note: Use must return to the BZA every two years for a renewal.

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- Will not adversely affect other property in the area in which it is located;

Staff Interpretation: No buffer is proposed to be constructed per the submitted plot plan, which is required for this use, and components of the proposed activity appear to be located less than 50 feet from the property line, which is not allowed. No business summary has been provided, and so the scope of the proposed use is not fully known at this time. Note:

Use must return to the BZA every two years for a renewal.

- Conforms to all applicable provisions of this Resolution for the district in which it is to be located and is necessary for public convenience in that location and if applicable, meets the specific standards below.

Staff Interpretation: No buffer is proposed to be constructed per the submitted plot plan, which is required for this use, and components of the proposed activity appear to be located less than 50 feet from the property line, which is not allowed. No business summary has been provided, and so the scope of the proposed use is not fully known at this time.

- Shall be located so as to be compatible with the surrounding area and provide safety to those using the facility.

Staff Interpretation: No buffer is proposed to be constructed per the submitted plot plan, which is required for this use, and components of the proposed activity appear to be located less than 50 feet from the property line, which is not allowed. No business summary has been provided, and so the scope of the proposed use is not fully known at this time.

The use is located along a County road classified as a Minor Rural Collector per the County's Major Thoroughfare Plan. The use is not expected to generate significant traffic. Note: Use must return to the BZA every two years for a renewal.

Mr. Suddath concluded his presentation with example motions.

Mr. Rainey asked to speak to the applicant before opening the public hearing.

Mr. Victoriano Torres Martinez and his translator Gina Torres introduced themselves.

Mr. Rainey stated that staff had several questions and would he explain the nature of the business.

Mr. Torres (*via Translator*) replied that it is a construction business and the storage use would be for storing business tools and equipment.

Mr. Rainey asked for the number of employees.

Mr. Torres (*via Translator*) replied that there are currently seven (7) employees and that they don't meet at that property but at job sites.

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Mr. Rainey asked how many employees show up at the property site to pick up their tools.

Mr. Torres (*via Translator*) replied that there are usually 3-4 employees in a group that come to the property 3-4 times a week.

Mr. Rainey asked for the number of vehicles stored on site.

Mr. Torres (*via Translator*) replied there were three (3) cars.

Mr. Rainey asked if the construction business deals with concrete mixers or delivered concrete on site.

Mr. Torres (*via Translator*) replied that the concrete is only delivered at the job site.

Mr. Rainey asked if concrete and building materials, and rebar would be stored on property.

Mr. Torres (*via Translator*) replied that they would only be storing wood, nails and cement mixers.

Mr. Rainey asked where the leftover construction and concrete materials would be stored.

Mr. Torres (*via Translator*) replied the leftover materials are the reason he wants to construct storage building.

Mr. Rainey questioned what would be stored outside.

Mr. Torres (*via Translator*) replied that if he were allowed to build the structure, he wouldn't need to store things outside, just a couple of machines and tractor.

Mr. Holt asked what the plans were for the existing gravel pad area.

Mr. Torres (*via Translator*) replied that he wanted to level the area.

When Mr. Holt if there were any plans to build on the pad, Mr. Torres (*via Translator*) stated no.

Mr. Holt asked how many delivery trucks are anticipated per day or week.

Mr. Torres (*via Translator*) replied that no deliveries are made on site, and that he would like a place for storage.

Mr. Holt asked if there would be any delivery trucks going in and out.

Mr. Torres (*via Translator*) replied that he is the only one entering and exiting the property and removing equipment to other job sites about twice a day.

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Mr. Harrison asked what the purpose of the the larger gravel area.

Mr. Torres (*via Translator*) replied that the original intent was to add a structure to the larger graveled area but he can remove the area if asked to.

Mr. Suddath asked if there are plans to build a house in the future and when.

Mr. Torres (*via Translator*) replied that there a plans to build a home between the pond and the center of the septic areas and is waiting on an estimate for the build.

Mr. Suddath clarified with Mr. Torres on whether he would be willing to remove the larger graveled area, Mr. Torres (*via translator*) agreed to do so if asked to.

Mr. Rainey opened the Public Hearing.

William Bates, 937 Harsh Lane, expressed opposition and stated concerns of heavy equipment and traffic entering and exiting the property, structures being built and people on property at all times of the day. Mr. Bates asked that the BZA defer the item until more information about the business has been obtained, he also added that he believed the property would be zoned commercial.

Mr. Rainey replied that the BZA does not rezone property but grants conditional uses that do not run with the property and have to return to the BZA for approval every two couple of years.

Commissioner David Kline, 398 Branham Mill Road, expressed opposition. Commissioner Kline stated that upon visiting the northern side of the property, there were 4-5 flat bed trailers on the property, forming panels, fill and trees around the property which is adjacent to surrounding 5 acres properties. Commissioner Kline expressed concern that the small concrete business might grow and bring with it heavy equipment into the area that would disrupt life and affect property values. Commissioner Kline asked that the item be deferred until more information has been received by the BZA as to the nature of the business before making a decision.

Richard Merryman, contractor, expressed his support. Mr. Merryman stated that Mr. Torres is a small contractor whose business has remained steady and who has utilized the same two small bobcats for close to 10 years. Mr. Merryman acknowledged that Mr. Torres has gotten ahead of himself with trucks and building a road, which he had no choice but to create due to the topography of his property. Mr. Merryman explained that Mr. Torres built the pad without the understanding of obtaining building permits and meeting setback regulations. Mr. Merryman added that Mr. Torres is willing to remove pad if he needs to. Mr. Merryman also stated that Mr. Torres means well but is not knowledgable as to what he is required to do to meet all regulations. Mr. Merryman also stated that he is willing to help Mr. Torres with his site plan and septic permit, as he already has septic areas identified.

Mr. Rainey closed the Public Hearing.

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Observing that there was not enough information to make a decision on the item, Mr. Rainey stated that nine (9) letters of opposition had been received from the public and some of the concerns could be resolved with more information.

Agreeing with Mr. Rainey that more information is needed, Mr. Holt added that a new site plan outlining requirements, the relocation of the the gravel pad and the possible removal of existing structures should be added as follow up requirements.

Mr. Suddath added that full access to property could also be added as a requirement.

Mr. Holt also stated that an appropriate business summary should be submitted.

Mr. Holt proposed to defer item if the applicant can re-submit a proper site plan with a proper business summary of what he will be doing, that meets all requirements.

Discussion ensued as to the legal timeline allowed for the deferral of an item. Mr. Suddath stated that per zoning code the the maximun days would be 60-90 days, but 60 days would work best.

Mr. Holt added that he would propose 60 days and the new Site Plan would need to include buffer requirements.

Mr. Suddath stated that staff would work with surveyor to ensure requirements are submitted in timely manner.

Mr. Rainey asked to add full access to the property as a motion.

Mr. Holt made a motion, to defer this item for 60 days, pending a business summary, Site Plan including buffers; removal of graveled area at the front of property and full access of the property by the Development Services staff.

Mr. Holt seconded the motion. The motion passed unanimously.

Mr. Rainey recused himself for the next item, Vice Chairman Webster introduced the next item and turned the meeting over to Mr. Suddath for staff presentation.

3. Michael Baker is requesting a Special Exception from County requirements contained at Chapter 11, Section 1101, Subsection S of the Sumner County Zoning Resolution related to Design and Occupancy Standards for Accessory Dwelling Units. This request is made pursuant to Chapter 14, Section 1411 of the County Zoning Resolution. Subject property is located at **401 Fern Valley Road, White House, TN, 37188**, is on Tax Map 078, Parcel 075.01, contains 1.76 acres, is zoned Rural Residential (RR) and is in the 14th Commission Voting District (Jamie Teachenor).

This item was deferred at the December 8, 2022 BZA meeting.

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Adjoining property owners were notified by certified mail and the agenda item was advertised in The Gallatin News on Thursday, March 30, 2023.

Mr. Suddath stated that this item had been deferred by the BZA in December 2022 and an update was provided by the applicant at last month's meeting. Property owners brought in a building that was being utilized as an accessory dwelling unit, upon staff had concerns on the architectural design and livability of the structure. The BZA determined that the structure was not a mobile home but was deferred in order to have the applicant certify that the structure was livable. The BZA required that an engineer's letter deeming the structure as livable was required. A site final visit was performed by an engineer for structural adequacy and occupancy and it was found that there were some corrections that needed to be made and that have been addressed for structural compliance. Once the BZA grants approval they can move forward with obtaining a building permit.

Mr. Suddath displayed photos of the home, explained the plot plan, septic permit and stated that the structure meets all setback requirements.

Concluding his presentation with example motions, Mr. Suddath added that the applicant has been very diligent in meeting all requirements and would recommend that the item be approved.

Next, Mr. Suddath turned the meeting over to Ms. Webster.

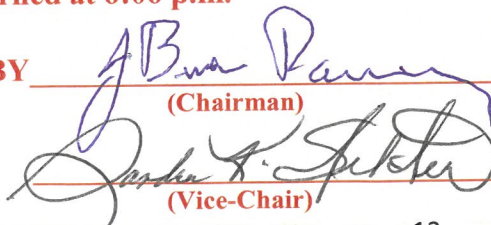
Mr. Harris made a motion, to approve a request for a Special Exception related to Design and Occupancy Standards for an Accessory Dwelling Unit at 401 Fern Valley Road, White House with the following conditions:

- a) All other applicable requirements for Detached Accessory Dwelling Units shall be met.**
- b) All required Zoning, Building and Land Disturbance Permits must be obtained from the applicable County departments.**
- c) Structure shall receive a Certificate of Occupancy from the County Building and Codes Department.**

Mr. Holt seconded the motion. The motion passed unanimously.

Meeting adjourned at 6:06 p.m.

APPROVED BY


(Chairman)

DATE 6-8-23


(Vice-Chair)

DATE 6-8-23